

(1) The Appeals Board has jurisdiction to review the finding that claimant's injury did not arise out of and in the course of her employment with respondent. This issue is

one of the issues expressly made subject to review by K.S.A. 44-534a. The Appeals Board does not have jurisdiction to review the finding that respondent is financially unable to pay benefits. This is not an issue listed in K.S.A. 44-534a. The Administrative Law Judge does have jurisdiction to make the decision.

(2) The Appeals Board finds claimant has proven by a preponderance of the credible evidence that her injury did arise out of and in the course of her employment with respondent.

Claimant has bilateral carpal tunnel syndrome and has had surgery on one side. She requests payment for the surgery done and for surgery recommended for the other hand. She also requests temporary total disability benefits. Respondent contends the carpal tunnel was caused by claimant's work for her previous employer, not the work for respondent. Before going to work for respondent, claimant performed repetitive hand work for another employer which was as strenuous if not more strenuous than the hand work she performed for respondent. The record included evidence that claimant experienced problems in her hands during and as a result of the work for the previous employer. The dispute here relates to whether claimant's work for respondent aggravated claimant's condition.

We will not attempt to review all of the evidence presented. There was evidence presented to suggest claimant's condition was not permanently aggravated by the work for respondent. The Appeals Board finds more persuasive, however, the evidence that the work for respondent did aggravate the condition. Claimant testified the condition was made worse by the work for respondent. The treating physician, Dr. Weaver, stated that in his opinion working for respondent most likely did aggravate claimant's carpal tunnel syndrome to the point where she required surgery.

The Administrative Law Judge cited the 1993 amendments to K.S.A. 44-501(c) in support of his decision to deny benefits in this case. As amended that statute provides: "The employee shall not be entitled to recover for the aggravation of a pre-existing condition, except to the extent that the work-related injury causes increased disability." The Appeals Board concludes the evidence presented in this case does establish that claimant's carpal tunnel condition was either caused or aggravated by her work for respondent and benefits should be ordered.

Because he denied compensability, the Administrative Law Judge made no finding regarding temporary total disability. The claim must, therefore, be remanded for additional findings relating to temporary total disability and for an order consistent with the decision of the Appeals Board.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Order of Administrative Law Judge Robert H. Foerschler, dated October 4, 1994, be reversed and the claim remanded with direction to make findings and enter an order regarding temporary total disability and medical benefits consistent with this decision. The finding that respondent is financially unable to pay these benefits remains in effect as originally made as part of the October 4, 1994 Order.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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